

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In re Application of
PINE TREE MEDIA, INC.
For Renewal of License of
Station KARW
Longview, Texas

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MM Docket No. 93-265

File No. BR-900817UF

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Honorable John M. Frysiak
Administrative Law Judge

PETITION TO ACCEPT LATE-FILED NOTICE OF APPEARANCE

Praise Media, Inc., ("Praise") by its counsel and pursuant to Section 1.221(c) of the Commission's Rules, 47 C.F.R. § 1.221(c), hereby submits a Petition to Accept Late-Filed Notice of Appearance in the above-captioned proceeding. As set forth more fully in the simultaneously-filed Opposition to Motion to Dismiss, Praise is a successor and assign to the interest of Pine Tree Media, Inc. ("Pine Tree") in the assets and license of AM station KARW. For good cause as set forth below, Praise respectfully requests that its Notice of Appearance be accepted as late filed.

The propriety of accepting late-filed notices of appearance in non-comparative cases is analyzed under the standard announced in Communi-Centre Broadcasting, Inc. v. FCC, 856 F.2d 1551 (D.C. Cir. 1988). See Nancy Naleszkiewicz, 7 FCC Rcd 1797 (1992). Under the Communi-Centre standard, the decision of whether to accept a late-filed notice of appearance depends on (1) the applicant's proffered justification for failure to comply; (2) the prejudice suffered by other parties; (3) the burden placed on the administrative system; and (4) the need

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to punish further abuse of the system and to deter further misconduct. As demonstrated below, application of this standard supports acceptance of this Petition.

Praise's failure to submit a timely notice of appearance is explained by two factors: First, Praise lacks experience with FCC procedure; second, the attorney Praise initially retained also lacked experience with the FCC and did not properly file the notice. Praise has never held an FCC license and is unfamiliar with the Commission's procedural rules. Recognizing this fact, Janet Washington, Treasurer of Praise and General Manager of station KARW, retained attorney Kenneth Kilgore of Mesquite, Texas, to prepare and file the required Notice of Appearance in this proceeding on behalf of Praise as directed by the Commission in its Hearing Designation Order and Notice of Forfeiture, 8 FCC Rcd 7591 (1993) ("HDO"). Mr. Kilgore prepared and submitted to the Commission staff and the Administrative Law Judge a document styled as a "Notice of Participation and Intervention," dated November 12, 1993. However, this document was not filed with the Commission's secretary as required by the rules and is therefore legally insufficient. However, it is clear from the preparation and filing of the document that Praise has evidenced its intent to participate in this proceeding. Had the document prepared by Mr. Kilgore been properly filed, it would have been timely.

The other Communi-Centre factors also support grant of this petition. No other parties exist, so prejudice is not possible. The administrative burden of proceeding with this hearing is clearly outweighed by the importance of providing continued service to Longview by KARW, whose African-American operators provide programming specifically targeted to an African-American audience. See Affidavit of Janet Washington, attached as Exhibit A.

Moreover, the issues raised in the HDO would have to be resolved before an application filed by Pine Tree, its successors or assigns, could be granted. Thus, proceeding here obviates the need for a future hearing. Likewise, making an example of Praise to deter future misconduct would simply serve to deny service to the public and would not resolve the important issues raised in the HDO.

In sum, the failure of Praise's previous counsel to comply with the Commission's procedural rules should not prevent the further participation of Praise, the only party to even attempt an appearance here and the successor and assign of Pine Tree. The HDO provides that Pine Tree and/or its successors and assigns be made parties to the hearing.

WHEREFORE, the premises considered, Praise respectfully requests that the Presiding Officer accept the simultaneously-filed Notice of Appearance and designate Praise as a party to this proceeding.

Respectfully submitted,
PRAISE MEDIA, INC.

By: 

Alan C. Campbell
Michael G. Jones

Its Attorneys

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February 8, 1994

EXHIBIT A

AFFIDAVIT

I, Janet Washington, General Manager of AM radio station KARW, Longview, Texas, and Treasurer of Praise Media, Inc., hereby state under pain and penalty of perjury that the following is true to the best of my knowledge, information and belief:

In mid 1990, a corporation doing business as "American Plastic Products, Inc." acquired the property located at 2929 Signal Hill Road in Longview, Texas, which is the land upon which radio station KARW is situated. As of March, 1991, Mr. H.E. Ferrell was serving as General Manager of radio station KARW and as representative of American Plastic Products, Inc. In March of 1991 Mr. Ferrell hired a Mr. Ray Lee Williams as a disc jockey at the station.

In August or September of 1991, Dr. Herbert Wren and Mr. Earl Jones, Jr. foreclosed on the property at 2929 Signal Hill Road and Mr. Ferrell was removed as General Manager. Mr. Williams was subsequently named General Manager of station KARW. Also in September of 1991, Mr. Williams proposed to start a business to be known as Praise Broadcasting and began negotiations for the purchase of the property located at 2929 Signal Hill. In late September 1991, Janet and Eugene Washington met with Mr. Williams to discuss the terms at which the property could be purchased from Dr. Wren and Mr. Jones. On February 10, 1992, Eugene Washington and Ray Lee Williams, acting as President and Vice-President, respectively, of Praise Media, Inc., entered into an agreement to purchase AM station KARW. Praise Media, Inc. was incorporated in the state of Texas on March 19, 1992.

Under the direction of Praise Media, Inc., KARW's tower was painted in April of 1992. A new Emergency Broadcast System was purchased and installed in November of

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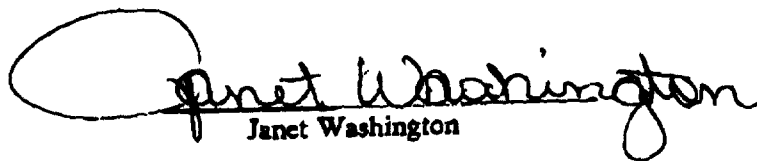
IRWIN, J.

1992, and the station's transmitter power has been monitored and regulated since February 1992.

The transmitter logs and public reference file are up-to-date.

Praise Media, Inc. is 100 percent minority (African-American) owned and operated and station KARW broadcasts programming specifically targeted to its African-American minority audience.

Further the affiant sayeth not.


Janet Washington

Date: 2-9-94

CERTIFICATE OF SERVICE

I, Lorena L. Ferry, hereby certify that on this 8th day of February, 1994, copies of the foregoing "Petition To Accept Late-Filed Notice Of Appearance" have been served by hand delivery upon the following:

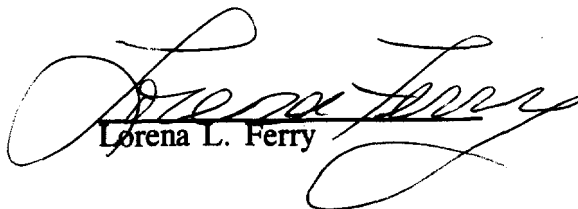
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Lorena L. Ferry